

When recorded, mail certified c
Department of Toxic Substances Control
Region 1
10151 Croydon Way, Suite 3
Sacramento, California 95827
Attn: Steven Ross

COVENANT AND AGREEMENT

TO RESTRICT USE OF PROPERTY

(ASSESSORS PARCEL NUMBER 275-162-003 AT SIERRA BATTERY SALES
SITE, SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA)

This Covenant and Agreement ("Covenant") is made on this
29th day of FEB., 1996, by and between the
California Department of Toxic Substances Control
("Department") and Leon H. Warrick and Dorothy J. Warrick
("Covenantor"), who are the owners on record of certain real
property situated in the City of Sacramento, County of
Sacramento, State of California, ("the Property"), described
as Assessors Parcel Number 275-162-003 in Exhibit "A"
attached hereto and incorporated herein by this reference,
with reference to the following facts:

- A. The Property has historically been used to manage hazardous waste and presently contains hazardous waste for which no remediation has occurred due to the presence of an existing structure, the Quonset Hut. A Final Removal Action Workplan dated July 1995 was approved by the Department on September 5, 1995.
- B. The Department, in compliance with the approved Final Removal Action Workplan, has attempted to remove hazardous waste soils containing lead, and has taken other actions and continues to take actions as of the date of this Covenant in compliance with the approved Final Removal Action Workplan.

Chronic exposure to lead has been known to cause learning deficits in children. It is classified by U. S. EPA as a probable human carcinogen.

- C. Covenantor and the Department desire and intend that, for future protection of public health, safety, and the environment, the Property shall be used in such a manner as to avoid any potential harm to persons or property which could potentially result from hazardous wastes which have been deposited historically on the Property.
- D. The Covenantor and the Department further desire and intend that the terms of the Covenant are for the mutual benefit of the Property, future owners and occupants of the Property, the Department and the public and, therefore, shall constitute an easement, covenant, restriction, and servitude held by the Department on behalf of the People of the State of California in the Property which shall run with the land, shall inure to the benefit of the Property, future owners and occupants of the Property, the Department, and the public and shall apply to and bind the respective successors in interest thereof.

ARTICLE I GENERAL PROVISIONS

1.01 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon the Property and subject to which the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property as mutual equitable servitude in favor of the Property and every portion thereof. Each and all of the Restrictions are imposed pursuant to and by agreement by and between the Covenantor and the Department and run with the land pursuant to Section 25230(a)(1) of the California Health and Safety Code.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors and assignees, and successors of such owner, heirs, successors, and assignees, that they are bound by the Restrictions as herein established, which must be adhered to for the benefit of future Owners and Occupants of the Property, the Department and the public, and that their interests in the Property will be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants, that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of the Property.

ARTICLE II DEFINITIONS

2.01 City. "City" shall mean the City of Sacramento and shall include its successor agencies, if any.

2.02 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.03 Excavation. "Excavation" shall mean the digging out and/or the removal of soil from the Property, including landscaping.

2.04 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, regrading, landscaping, bodies of water, park and playground improvements, and paved parking areas, constructed or placed upon any portion of the Property.

2.05 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the property.

2.06 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs, and assigns, who at any time hold title to all or any portion of the Property.

2.07 Site. "Site" shall mean all parcels or portions of parcels which in conjunction constitute the Sierra Battery Sales Site.

ARTICLE III
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Development and Use. Every Owner and Occupant promises to restrict the use of the Property described as Assessor Parcel Number 275-162-003 in Exhibit "A" as follows:

- (1) Residential development for human habitation shall not be permitted on the Property.
- (2) Hospitals or health clinics shall not be permitted on the Property.
- (3) Day-care centers for either children or senior citizens shall not be permitted on the Property.
- (4) Schools for children under 21 years of age shall not be permitted on the Property.
- (5) No groundwater shall be extracted on the Property.
- (6) No raising of food (cattle, food crops, cotton, chickens) shall be permitted on the Property.
- (7) Physical modifications of existing structures which disturb the soil, paving, or soil/structure interface shall not be permitted on the Property.
- (8) No activities which will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Property without a Health and Safety Plan and a Soils Management Plan submitted to the Department for review and approval.
- (9) Subdivision of the Property is forbidden, except as allowed under Health and Safety Code Section 25232(a)(2) and (b)(2).

These restrictions shall apply unless the Owner or Occupant has demonstrated to the satisfaction of the Department that

all remedial measures necessary for protection of human health and the environment have been taken on the property. Other uses or modification can be implemented only after prior written approval from the Department. Physical modifications to the interior structure which do not disturb the soil, paving, or soil/structure interface shall not require the Department's approval.

3.02 Conveyance of Property. The Owner or Owners and the Occupants shall provide a thirty (30) day advance notice to the Department and City of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any interest in it except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of an Owner or Occupant to comply with any of the requirements, as set forth in Section 3.01, shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. This instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

ARTICLE IV
VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, any Occupant of the Property may apply to the Department for a termination of the Restrictions as they apply to the Property. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency, or (2) three business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt:

To: Leon H. Warrick
Dorothy J. Warrick
930 Del Paso Boulevard
Sacramento, California 95815

In every case, copies shall be sent to:

Department of Toxic Substances Control
Region 1 Branch Chief
Central California Cleanup
Operations Branch
10151 Croydon Way, Suite 3
Sacramento, California 95827

and

Director of Planning Department
City of Sacramento
1231 I Street
Sacramento, California 95814
(916) 264-5571

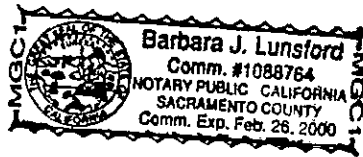
5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein are determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the Director, California Department of Toxic Substances Control or his designated representative. This instrument shall be recorded by Leon H. Warrick or Dorothy J. Warrick with the County recorder of the County of Sacramento within ten (10) days after the date of execution by both parties in accordance with the recording requirements of the California Health and Safety Code, Section 25230. The provisions of the Covenant will also be incorporated into, and become part of, the land use plan for the Property as instituted by the local planning agency.

5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date first set forth above.



OWNER

Leon H. Warrick

By: Leon H. Warrick

Date: 29 Feb. 1996

OWNER

Dorothy J. Warrick

By: Dorothy J. Warrick

Date: 29 Feb. 1996

DEPARTMENT OF TOXIC

SUBSTANCES CONTROL

James L. Tjosvold

By: James L. Tjosvold

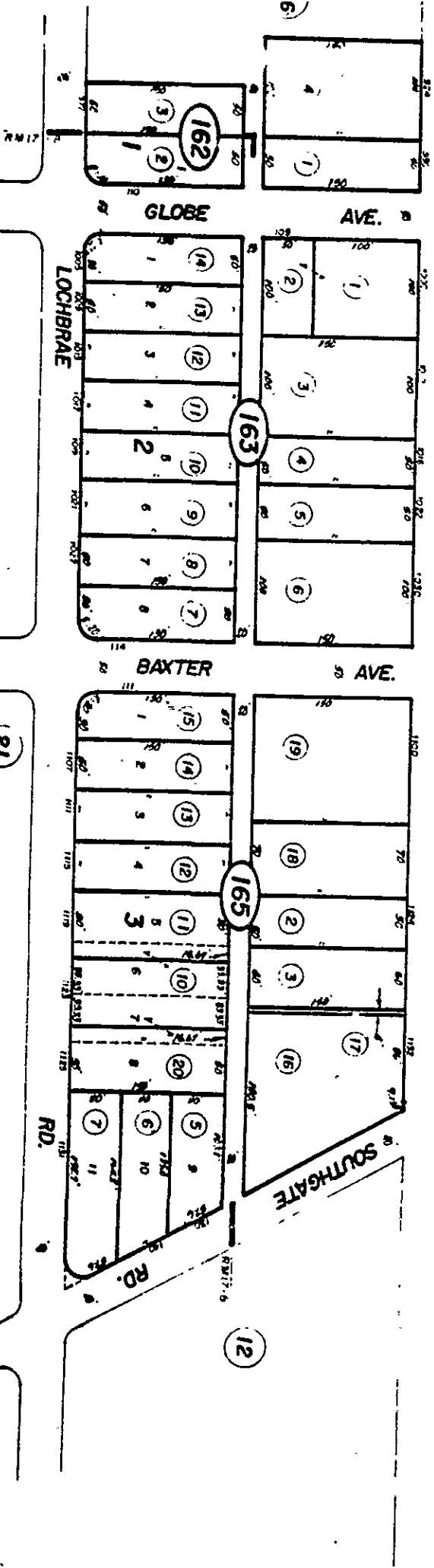
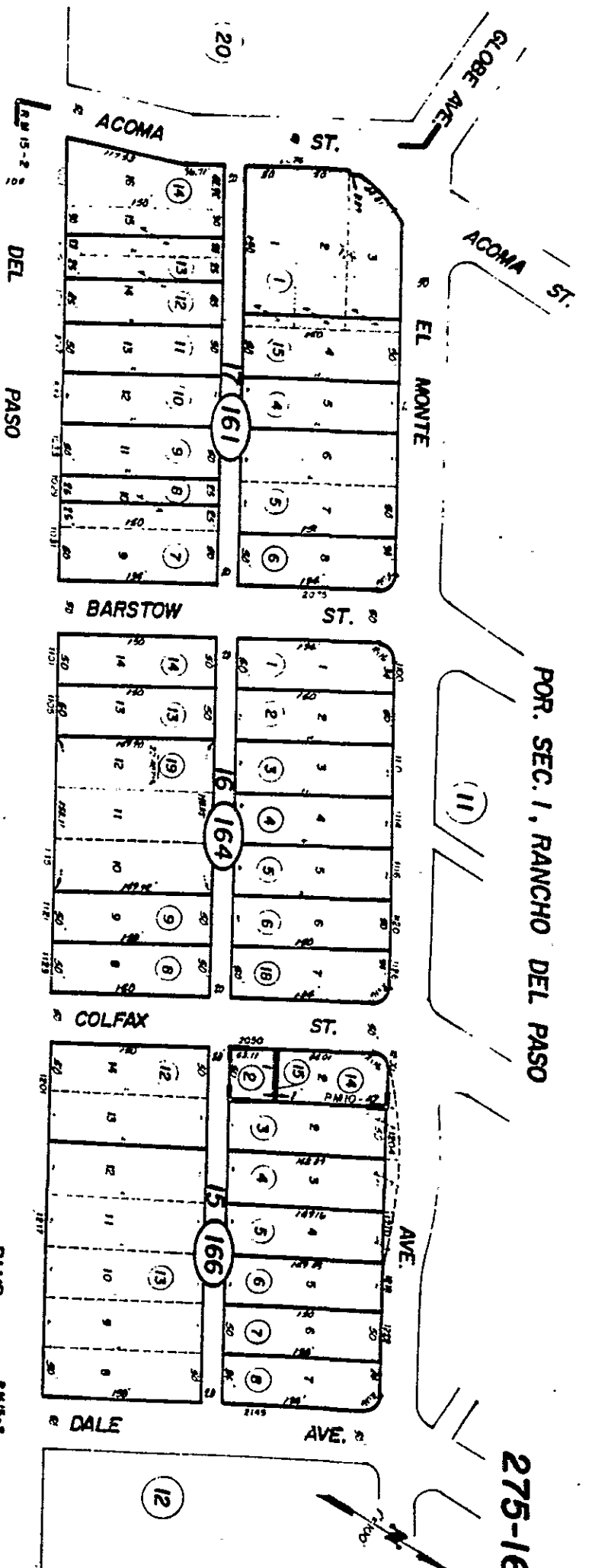
Title: Chief, Central California Cleanup

Date: 3/18/96 operations

Exhibit A

POR. SEC. 1, RANCHO DEL PASO

275-16



North Sacramento Sub. No. 9, R.M. Bl. 15, Pg. 2
Woodlake, R.M. Bl. 17, Pg. 8

Assessor's Map Bl. 275 - Pg. 14
County of Sacramento, Calif.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

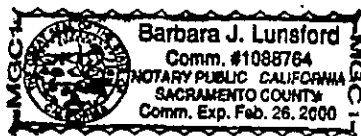
NO 5927

State of California
County of Sacramento

On 2-29-96 before me, Barbara J. Lunsford
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Dorothy J. Warrick & Leon H. Warrick
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Barbara J. Lunsford
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Covenant & Agreement
TITLE OR TYPE OF DOCUMENT

13
NUMBER OF PAGES

2-29-96
DATE OF DOCUMENT

[Signature]
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIA

County of SACRAMENTO

On 3-18-96 before me, DAVID HURLEY
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES TJOSVOLD
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

David Hurley
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
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TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☒ OTHER: Branch Chief
Central California Cleaning Operations

DESCRIPTION OF ATTACHED DOCUMENT

Covenant & Agreement

TITLE OR TYPE OF DOCUMENT

12

NUMBER OF PAGES

2/29/96

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

State of California
Dept. of Toxic Substances Control

Leon Warrick, Dorothy Warrick

SIGNER(S) OTHER THAN NAMED ABOVE

Note: Pursuant to Government Code 6103, the Department of Toxics Substances Control (DTSC) does not need to pay a fee for filing of a deed restriction because it is done to perform an official service of DTSC.